6560-50-P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[EPA-R01-OAR-2013-0028; A-1-FRL-9779-9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Massachusetts. These SIP revisions consist of a demonstration that Massachusetts meets the requirements of reasonably available control technology for oxides of nitrogen (NOx) and volatile organic compounds (VOC) set forth by the Clean Air Act with respect to the 1997 8-hour ozone standard. Additionally, we are proposing approval of updates to two existing regulations limiting emissions of volatile organic compounds. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2013-0028 by one of the following methods:

1. www.regulations.gov : Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.

4. Mail: "Docket Identification Number EPA-R01-OAR-2013-0028," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2013-0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment,

EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittals are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA, 02108.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1046, fax number (617) 918-0046, email mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ is used, we mean EPA. Additionally, the phrase “the Commonwealth” refers to the state of Massachusetts. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose.

On January 31, 2008, the State of Massachusetts submitted a formal revision to its SIP. The SIP revision consists of information documenting how Massachusetts complied with the reasonably available control technology (RACT) requirements for the 1997 8-hour ozone

standard.[1] Additionally, on June 1, 2010, Massachusetts submitted updates to two regulations that limit volatile organic compound (VOC) emissions, one of which further restricted emissions from pressure-vacuum (PV) valves used by gasoline service stations, and another that updates an existing regulation limiting VOC emissions from solvent cleaning operations. The Commonwealth's submittals requested that they be incorporated into the Massachusetts SIP.

Sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA) require states to implement RACT in areas classified as moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the Act requires RACT in states located in the ozone transport region (OTR). Specifically, these areas are required to implement RACT for all major VOC and NOx emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NOx control requirements. States must submit rules or negative declarations for CTG source categories, but not for sources in ACT categories. However, RACT must be imposed on major sources of NOx, and some of those major sources may be within a sector covered by an ACT document.

In 1997, EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and

[1] The Commonwealth's submittal was made to address RACT for the 1997 8-hour ozone standard and does not address the 2008 8-hour ozone standard of 0.075 parts per million.

adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma. On April 30, 2004 (69 FR 23858), EPA designated areas attainment or nonattainment with respect to the 1997 8-hour ozone standard. The entire state of Massachusetts was designated nonattainment and classified as moderate, as two nonattainment areas. See 40 CFR 81.322.

On November 29, 2005, EPA published a final rule in the Federal Register that outlined the obligations that areas found to be in nonattainment of the 1997 8-hour ozone standard needed to address (see 70 FR 71612). This rule, referred to as the "Phase 2 Implementation rule," contained, among other things, a description of EPA's expectations for states with RACT obligations. The Phase 2 Implementation rule indicated that states could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or with a combination of these two approaches. In addition, a State must submit a negative declaration in instances where there are no CTG sources.

II. Summary of Massachusetts' SIP Revisions..

On January 31, 2008, Massachusetts submitted a demonstration that its regulatory framework for stationary sources meets the criteria for RACT as defined in EPA's Phase 2 Implementation rule. The Commonwealth held a public hearing on the RACT program on January 18, 2008. Massachusetts' RACT submittal notes that its prior statewide designation as nonattainment for the 1-hour ozone standard resulted in the adoption of stringent controls for

major sources of VOC and NOx, including RACT level controls. Therefore, as allowed for within EPA's Phase 2 Implementation rule, much of the Commonwealth's submittal consists of a review of RACT controls adopted under the 1-hour ozone standard and an indication of whether those previously adopted controls still represent RACT under the 1997 ozone standard. Additionally, Massachusetts notes that as a member state of the Ozone Transport Commission (OTC) it works with that organization to identify and adopt, as deemed appropriate, regulations on additional VOC and NOx categories beyond those for which EPA has issued CTGs or ACT documents.

With regard to VOC controls, the Commonwealth's submittal identifies the specific control measures that have been previously adopted to control emissions from VOC sources, reaffirms negative declarations for some CTG categories, and describes updates being considered to strengthen three VOC control regulations to ensure that they will continue to represent RACT under the 1997 ozone standard. A table named "Table RACT-1" within Massachusetts' submittal contains a summary of the state's response to each of the CTG categories that EPA issued through 2006.[2] The table identifies the specific state rule, where relevant, that is in place, and the date that EPA approved the rule into the Massachusetts SIP. A table labeled "Table RACT-2" within the Commonwealth's submittal identifies the major VOC sources in the state that are not covered by an ACT or CTG document. The state has issued source-specific orders containing control requirements for the facilities listed in Table RACT-2 of the state's submittal, and all of these have been previously approved into the Massachusetts SIP.

The Commonwealth's submittal notes that no sources exist in the state for some CTG categories. Specifically, Table RACT-1 of Massachusetts' submittal makes negative declarations for the following CTG sectors:

[2] This rulemaking does not address Massachusetts' response to the CTGs that EPA issued in 2006, 2007, and 2008.

1. Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds;
2. Leaks from Petroleum Refinery Equipment;
3. Manufacture of Synthetic Pharmaceutical Products;
4. Manufacture of Pneumatic Rubber Tires;
5. Large Petroleum Dry Cleaners;
6. Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins;
7. Natural Gas / Gasoline Process Leaks;
8. Synthetic Organic Chemical Manufacturing Air Oxidation Processes; and
9. Ship Building and Repair.

Massachusetts' review of its control program for sources of VOC concludes that, with the adoption of revised rules for solvent cleaning, Stage II vehicle refueling, and cutback asphalt, all required VOC sources in the state are subject to RACT.

As required, the Commonwealth's submittal addresses NO_X emissions as well as VOC emissions. In their submittal, the Commonwealth explains that in order to address the 1990 CAA NOx RACT requirement, Massachusetts adopted 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOx)." This rule established NOx RACT for large, medium and small boilers; stationary combustion turbines; stationary reciprocating internal combustion engines; and glass melting furnaces. In addition, they describe that 310 CMR 7.19(12) provided for single source NOx RACT determinations for major "miscellaneous" NOx sources with a potential to emit 50 tons or more per year of NOx. Massachusetts explains that they have reviewed 310 CMR 7.19 and, in general, have determined

that the NOx controls required by 310 CMR 7.19 continue to constitute NOx RACT under the 1997 8-hour ozone standard for each of the source categories covered by that rule, as well as for major sources of NOx for which single-source RACT determinations were made pursuant to 310 CMR 7.19(12). Additionally, the Commonwealth certifies in Tables RACT-1 and RACT-2 that current Massachusetts NOx RACT constitutes 8-hour NOx RACT under the 1997 ozone standard for the NOx categories listed and for the facilities for which single-source RACT determinations were made.

Within their submittal, the Commonwealth notes that certain NOx emitting sectors are controlled by additional sections of Massachusetts' air pollution control regulations. First, Massachusetts notes that electric generation units (EGUs) and large industrial boilers, in addition to requirements contained within 310 CMR 7.19, are also covered by 310 CMR 7.28, "NOx Allowance Trading Program," and 310 CMR 7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)." In addition, Massachusetts notes that a subset of the largest fossil fuel-fired EGUs in Massachusetts are also subject to NOx emission limitations under 310 CMR 7.29, "Emissions Standards for Power Plants," adopted in 2001. Lastly, the Commonwealth notes that municipal waste combustors, in addition to requirements contained within 310 CMR 7.19, are also covered by 310 CMR 7.08, "Incinerators."

Massachusetts' review of its control program for major sources of VOC and NOx thus concludes that, with the adoption of revised rules for solvent cleaning, Stage II vehicle refueling, and cutback asphalt, all major sources in the state are subject to RACT under the 1997 ozone standard.

III. EPA'S Evaluation of Massachusetts' SIP Revisions.

EPA has reviewed Massachusetts' determination that it has adopted VOC and NOx control regulations for stationary sources that constitute RACT, and determined that the set of regulations cited by the Commonwealth constitute RACT for purposes of the 1997 8-hour ozone standard. Additionally, we are proposing to approve updates to two VOC RACT regulations submitted by Massachusetts on June 1, 2010.

a. Evaluation of VOC Requirements.

Massachusetts' submittal documents the set of VOC control regulations that have been adopted to ensure that RACT level controls are required in the state. These requirements include: 310 CMR 7.18, "Volatile and Halogenated Organic Compounds;" and 310 CMR 7.24, "Organic Material Storage and Distribution." Table RACT-1 of the Commonwealth's submittal indicates that Massachusetts has either adopted a regulation that has been incorporated into the SIP to address EPA's pre-2006 CTGs, or submitted a negative declaration in instances where no facilities exist in the state for certain CTGs identified in the submittal. Massachusetts' review of these VOC RACT regulations revealed that several could be strengthened in order to continue to meet RACT, and we address the disposition of those updates further below.

Additionally, Massachusetts has adopted numerous single source RACT orders for major sources of VOC that are not covered by one of EPA's CTGs, and these orders have been submitted to EPA and incorporated into the SIP. They are identified within the Commonwealth's submittal in Table RACT-2. Also, as noted above, Massachusetts adopted, and we are proposing to approve into the Massachusetts SIP, updates to two existing VOC

RACT rules, namely the state's existing solvent metal cleaning and Stage II motor vehicle refueling regulations.

The Commonwealth's submittal documents a substantial downward trend in VOC emissions from stationary sources, a portion of which is attributable to RACT controls implemented by Massachusetts. Data collected by Massachusetts from its annual survey of industrial point source emitters reveals that between 1996 and 2002, VOC emissions from industrial point sources declined by 63%. This decline in emissions was brought about, in part, by the RACT program implemented by Massachusetts.

We are proposing approval of updates to the following two VOC RACT regulations described below, which Massachusetts has strengthened such that they continue to represent RACT under the 1997 ozone standard. Although Massachusetts's RACT certification submittal indicates that three existing VOC rules were to be updated in such fashion, only two were updated. Massachusetts updated its existing rules limiting emissions from solvent cleaning (metal degreasing) and emissions from storage tanks at gasoline service stations, but did not update its existing cutback asphalt regulation. These three regulations are discussed individually, as follows.

Solvent degreasing rule

Massachusetts updated its previously SIP-approved (58 FR 34911) solvent cleaning rule primarily to include a new requirement limiting the vapor pressure for cold cleaning solvents, as recommended within the Ozone Transport Commission's (OTC's) 2001 model rule for this activity. The requirement applies to cold cleaning degreasers that hold more than one

liter of solvent. The Commonwealth's proposed revision includes exemptions for cold cleaning degreasers used in special and extreme metal cleaning, for devices located in a permanent total enclosure with an overall VOC control efficiency of at least 90 percent, and for facilities that receive an approval from the Department of Environmental Protection (DEP) to use a non-compliant solvent due to unsafe operating conditions. We note that with the new vapor pressure limit, the revised rule is more stringent than the previously SIP-approved version of the rule. In particular, Massachusetts estimated that the revised rule would reduce VOC emissions by 7 tons per summer day in 2009 compared to the previously regulated levels.[3] Therefore, the revised rule meets the requirements of section 193 of the CAA, which provides that "[n]o control requirement in effect ... before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." For similar reasons, the revisions meets the requirements of section 110(l) of the CAA, which prohibits EPA from approving a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress ... or any other applicable requirement of [the Clean Air Act]." Additionally, we note that the limited number of exemptions from the new vapor pressure requirement is acceptable given that this requirement is above and beyond the RACT recommendation within the EPA's CTG[4] for this source category.

Stage II rule

[3] See "Background Information and Technical Support Document for Proposed Amendments To 310 CMR 7.00 et seq, 310 CMR 7.18, Volatile and Halogenated Organic Compounds, Solvent Metal Degreasing," Massachusetts Department of Environmental Protection, October 17, 2008, available in the docket for this rulemaking.
[4] See "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA-450/2-77-022; 1977/11.

The Commonwealth updated its previously adopted, SIP-approved (65 FR 78974) Stage II Vapor Recovery regulation, 310 CMR 7.24(6), primarily to require the use of PV vent caps on vapor balance systems installed on underground gasoline storage tanks to further reduce evaporative emissions from vehicle refueling. A number of additional updates were also made to the rule, including the following items.

The Commonwealth revised definitions for the terms "isolate," "minor modification," "routine maintenance," and "substantial modification," and also proposed new language clarifying requirements that ensure timely repair of Stage II systems. Massachusetts incorporated requirements that compel compliance testing companies to notify the DEP of any facilities that fail a compliance test, and also revised existing requirements for compliance testing companies.

Experience gained from operation of the Stage II program revealed that the compliance benefit attributed to the 120 day in-use compliance testing and certification requirement for vacuum assist systems could be achieved by the weekly visual and annual compliance testing requirement, and so the Commonwealth eliminated the 120 day in-use compliance testing requirement. Additionally, Massachusetts' revisions include an allowance for a facility to commence operation immediately upon passing applicable testing requirements.

When Massachusetts initially adopted its Stage II rule in 1989, it adopted a more stringent applicability level than subsequently required by the CAA amendments of 1990[5] that resulted in essentially all dispensing of gasoline to be subject to the regulation. Because of this, very small levels of gasoline dispensing activity such as that which occurs at salvage yards was covered by the regulation. Therefore, the Commonwealth's revised rule exempts motor vehicle

[5] Section 182(b)(3) of the CAA requires Stage II controls at gasoline dispensing facilities which dispense 10,000 gallons or more per month or 50,000 gallons per month in the case of independent small business marketers.

salvage yards that dispense recovered fuel on-site to employee vehicles. By including this exemption, Massachusetts believes that the air quality protections afforded by the rule will not be adversely affected. Given the minimal amount of gasoline that will receive this exemption in comparison to the statewide use of motor vehicle fuel, we agree with the Commonwealth's conclusion.

The Commonwealth's revisions to the Stage II regulation include several provisions relating to requirements put in place by the California Air Resources Board (CARB). These include an allowance for the installation of CARB approved above ground storage tanks, references to CARB Stage II approval letters, and an update to the list of CARB approved Stage II systems to incorporate recently adopted CARB Executive Orders.

Massachusetts also made a number of minor revisions to existing recordkeeping and testing requirements applicable to Stage II system operators. We note that, with the addition of the new PV vent valve requirements, the revised rule is more stringent than the previously SIP-approved rule, even after accounting for the new exemption for motor vehicle salvage yards that dispense recovered fuel on-site to employee vehicles. Therefore, the revision meets the requirements of section 110(l) of the CAA.

The Commonwealth submitted its updated Stage II vapor recovery and solvent cleaning rules to EPA on June 1, 2010, and we are proposing approval of them within this action.

Cutback asphalt rule

The Commonwealth's January 31, 2008 submittal indicated that updates were also intended for 310 CMR 7.18(9), the existing cutback asphalt paving rule. However, on January 18, 2013, Massachusetts submitted a letter withdrawing portions of the January 31, 2008

submittal, including the commitment to revise the cutback asphalt rule. The Commonwealth noted in its January 18, 2013 withdrawal letter that on May 29, 2012 (77 FR 31496), EPA issued a final determination that Eastern Massachusetts had attained the 1997 8-hour ozone standard, and on June 19, 2012 (77 FR 36404) issued a similar determination for the Western Massachusetts nonattainment area. Therefore, the Commonwealth indicated that it now believes that its existing SIP-approved (58 FR 3495) cutback asphalt regulation continues to represents RACT. Given the circumstances cited above, we concur with this conclusion.

b. Evaluation of NOx Requirements.

Massachusetts' submittal documents the set of NO_X control regulations that have been adopted to ensure that RACT level controls are required in the state. These requirements include the following sections of title 310 of the Code of Massachusetts Regulations:

7.08, "Incinerators;"
7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOx);"
7.28, "NOx Allowance Trading Program;"
7.29, "Emission Standards for Power Plants;" and,
7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)."

Table RACT-1 of the Commonwealth's submittal indicates the regulation that the Commonwealth has adopted, where appropriate, to address EPA's ACTs for NOx source

categories. We note that we have not updated any of the ACT documents noted within Table RACT-1. Massachusetts' submittal addresses NOx RACT for all major sources in the Commonwealth. For the following sectors for which EPA has published ACT guidelines, Massachusetts's submittal indicates that there are no major sources of NOx within the Commonwealth: nitric and adipic acid plants; cement plants; and iron and steel manufacturing facilities. Major NOx sources do exist in Massachusetts for the ACT categories noted within Table RACT-1, and this Table identifies the NOx RACT regulations the Commonwealth has adopted to address them. These ACT categories include combustion turbines, process heaters, internal combustion engines, industrial-commercial-institutional boilers, and glass manufacturing facilities. Massachusetts' RACT submittal certifies that these regulations represent RACT for purposes of EPA's 1997 8-hour ozone standard. Additionally, Massachusetts has adopted three single source RACT orders for major sources of NOx that are not covered by one of EPA's ACTs, and these orders, identified in Table RACT-2, have been submitted to EPA and incorporated into the SIP. See 40 CFR 52.1167. Table RACT-1 also lists regulations adopted by the Commonwealth to further control NOx emissions from electric utility boilers and municipal waste combustors (MWCs), and we discuss these two sectors separately below.

Municipal Waste Combustors

MWCs represent one of the largest NOx emitting sectors in the Commonwealth, and EPA previously approved RACT requirements for these units within 310 CMR 7.19(9), which became effective in 1995. See 64 FR 48095. More recently, in 2000, the Commonwealth tightened emission limits for eleven of the seventeen MWC units in the Commonwealth via a

strengthening of 310 CMR 7.08(2), Incinerators. Massachusetts submitted the updated rule to us, and we approved it as part of the Commonwealth's plan for controlling MWC emissions from existing large MWC plants under Section 111(d) of the CAA on October 9, 2002 (67 FR 62894). Massachusetts noted that the update to section 7.08(2) established emission limits that were equivalent to those within 40 CFR 60 Subpart Cb, which refers to EPA's emission guideline entitled, "Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994." The Commonwealth's RACT certification further noted that one unit in Massachusetts is subject to the New Source Performance Standard located at 40 CFR 60 Subpart Eb. In light of the above, we find that the controls on 12 of the 17 units as specified above, in addition to the initial baseline adoption of RACT for MWCs in 1995 pursuant to CMR 7.19(9), demonstrates that the Commonwealth has required an overall RACT level of control for these units.

Electric utility boilers

EPA's Phase 2 Ozone Implementation Rule mentioned above addressed various statutory requirements, including the requirement for RACT level controls for sources located within nonattainment areas generally, and controls for NO_x emissions from EGUs in particular. EPA indicated its determination that the regional NO_x emissions reductions that result from either the NO_x SIP Call or the CAIR would meet the NO_x RACT requirement for EGUs located in states included within the respective NO_x SIP Call or the CAIR geographic regions. Thus, EPA concluded that: "[t]he State need not perform a NO_x RACT analysis for sources subject to the State's emission cap-and-trade program where the cap-and-trade program has been adopted by

the State and approved by EPA as meeting the NO_x SIP Call requirements or, in States achieving the CAIR reductions solely from electric generating units (EGUs), the CAIR NO_x requirements."[6] Based in part on this existing EPA rule at that time, the Commonwealth certified that the NOx sources regulated by its NO_X SIP Call and CAIR rules meet the 8-hour ozone RACT requirements for purposes of the 1997 ozone standard.

However, in November 2008, several parties challenged EPA's Phase 2 Ozone Implementation Rule. In particular, they challenged EPA's determination that compliance with the NO_x SIP Call and/or the CAIR could satisfy NO_x RACT requirements for EGUs in nonattainment areas and EPA's determination that compliance with the CAIR could satisfy NO_x RACT for EGUs in ozone nonattainment areas. As a result of this litigation, the Court decided that the provisions in the Phase 2 Ozone Implementation Rule indicating that a state need not perform (or submit) a NO_x RACT analysis for EGU sources subject to a cap-and-trade program that meets the requirements of the NO_x SIP Call are inconsistent with the statutory requirements of section 172(c)(1).[7] The Court specifically held that the Phase 2 Ozone Implementation Rule allowing use of the NO_x SIP call to constitute RACT without any locally applicable analysis regarding the equivalence of NO_x SIP Call and RACT reductions: "is inconsistent with the Clean Air Act . . . in allowing participation in a regional cap-and-trade program to satisfy an area-specific statutory mandate." The Court emphasized that: "the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement . . . Accordingly, participation in the NO_x SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area." In view of its decision in North Carolina

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[6] See Phase 2 Ozone Implementation Rule, 70 FR 71617.
[7] See NRDC v. EPA, 571 F.3d 1245 (D.C. Cir. 2009).

v. EPA, in which the Court had previously remanded the CAIR, the court deferred consideration of the litigant's challenge to the Phase 2 Ozone Implementation Rule insofar as they related to the CAIR program. In light of the above, as well as a 2007 petition for reconsideration that EPA granted on this issue as it pertains to CAIR,[8] we do not consider the NOx SIP call or CAIR to equal NOx RACT. Rather, consistent with the above ruling, we have prepared a locally applicable analysis of whether electric utility boilers in the Commonwealth are subject to a RACT level of controls.

Electric utility boilers are subject to the Commonwealth's initial NOx RACT regulation, 310 CMR 7.19, which was adopted in the mid-1990s. We previously determined that the emission limits within 310 CMR 7.19 required a RACT level of control on these units for purposes of our 1-hour ozone standard. See 64 FR 48095. Massachusetts subsequently acted to further reduce NOx emissions from these units by participation in several NO_X budget trading programs, and also by enactment of 310 CMR 7.29, "Emission Standards for Power Plants."

Regarding NOx budget trading programs, between 1999 and 2002, Massachusetts participated in the OTC's NOx Budget Program. Massachusetts implemented this program by adopting 310 CMR 7.27, "NOx Allowance Program," and submitted this regulation to EPA which we incorporated into the Massachusetts SIP on December 27, 2000 (65 FR 81743). In 2003, the sources covered by the NOx Allowance Program were transitioned to the Federal NOx budget program (also referred to as the "NOx SIP call") which Massachusetts implemented by adopting 310 CMR 7.28, "NOx Allowance Trading Program." Massachusetts submitted this regulation to EPA, and we approved it into the Massachusetts SIP on December 3, 2007 (72 FR 67854). The Federal NOx budget program achieved significant additional NOx reductions

[8] See Earthjustice Petition for Reconsideration of the Clean Air Fine Particle Rule, June 25, 2007. See also April 25, 2011 letter from Lisa P. Jackson to Paul Cort, Earthjustice, responding to the June 25, 2007 petition for reconsideration.

within Massachusetts from the sources subject to its requirements. In particular, emissions from units within Massachusetts subject to the Federal NOx budget program reduced ozone season NOx emissions from 9,265 tons in 2003 to 3,232 tons by 2008, representing a 65% reduction in emissions. Massachusetts then acted to further reduce NOx emissions from these units by adopting 310 CMR 7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)." Massachusetts submitted this program to EPA, and we approved it into the SIP on December 3, 2007 (72 FR 67854). By 2011, ozone season NOx emissions from units within the Commonwealth subject to the CAIR rule decreased by an additional 46%, falling from 3,232 tons in 2008 to 1,760 tons in 2011. The substantial decrease in NOx emissions from sources in the Commonwealth subject to the Federal NOx budget and CAIR programs was brought about, in part, by the installation of various types of NOx emission control equipment of the variety listed in Table 1, below. Although the CAIR program was subject to a number of court challenges, a recent decision by the U.S. Court of Appeals for the District of Columbia issued on August 21, 2012 which vacated the Cross State Air Pollution Rule (CSAPR) provided that until the CSAPR litigation is resolved, the CAIR program remains in effect. (EME Homer City Generation, L.P., v. EPA, No. 11-1302. (D.C. Cir. 2012)).

Regarding 310 CMR 7.29, "Emission Standards for Power Plants," the Commonwealth adopted this regulation in 2001, and submitted it to EPA for incorporation into the SIP within a submittal made on December 30, 2011, to address regional haze requirements. We approved the state's submittal, including 310 CMR 7.29, within a final rulemaking signed by the Regional Administrator on September 12, 2012 and forwarded for publication in the Federal Register. A copy of the signed approval of the Commonwealth's regional haze SIP is available in the docket for this action. This rule covers the largest fossil fuel-fired EGUs in Massachusetts

and required individual emissions units to install additional add-on controls to comply with output-based NOx emission limits between 2000 and 2008. As of 2009, six operating facilities were subject to this regulation containing 13 EGUs. Annual NOx emissions for these six facilities dropped from 30,352 tons in 2000 to 7,009 tons in 2009, a drop of 77%. The NOx controls installed on each unit at these facilities, as listed in their Title V Operating Permit, is contained in Table 1, below. Within Table 1, the following abbreviations are used: LNB for low NOx burners; OFA for over-fire air; FGR for flue gas recirculation; SCR for selective catalytic reduction; and SNCR for selective non-catalytic reduction.

Table 1: NOx Controls at facilities governed by 310 CMR 7.29

Facility	Unit	NOx Controls Installed	Operating Status
Brayton Point	1	LNB, OFA, SCR	Operating
Brayton Point	2	LNB, OFA	Operating
Brayton Point	3	LNB, OFA, SCR	Operating
Brayton Point	4	LNB	Operating
Canal Station	1	LNB, OFA, FGR, SCR	Operating
Canal Station	2	LNB, OFA, FGR, combustion tuning, SNCR	Operating
Mount Tom	1	LNB, OFA, SCR	Operating
Mystic	7	None[9]	Operating
Salem Harbor	1	LNB, SNCR	Retired 1/15/12
Salem Harbor	2	SNCR	Retired 1/15/12
Salem Harbor	3	LNB, OFA, SNCR	Operating
Salem Harbor	4	LNB	Operating
Somerset	8	OFA, Natural Gas Reburn System, SNCR	Retired 1/2/10

As previously mentioned, Massachusetts adopted a set of regulations to address NOx RACT for the 1-hour ozone standard, and we approved those requirements into the

[9] RACT requirements for Unit 7 are located at 310 CMR 7.19 (4)(a)(3)(a)(i), which requires a NOx emission limit of 0.25 lbs/mmBTU when burning oil, and pursuant to 310 CMR 7.19 (4)(a)(3)(a)(ii) which requires a NOx emission limit of 0.20 lbs/mmBTU when burning gas. Between 2010 and 2012, the unit was well within these limits, emitting NOx within a range of 0.06 to 0.08 lbs/mmBTU.

Commonwealth's SIP. Since then, Massachusetts has acted to further reduce NOx emissions from the two largest NOx emitting sectors in the state, namely municipal waste combustors and electric utility boilers. In light of the above regulatory actions and NOx control equipment installations and the resulting decrease in NOx emissions within Massachusetts, in addition to the initial baseline adoption of RACT in CMR 7.19, EPA is proposing approval of Massachusetts' January 31, 2008 SIP certification that the state has adopted air pollution control strategies that represent NOx RACT for purposes of compliance with our 1997 8-hour ozone standard. Our decision is also based, in part, on the fact that both nonattainment areas within the Commonwealth have attained our 1997 8-hour ozone standard by their attainment date of June 15, 2010 as noted in Section IV, Proposed Action.

IV. Proposed Action.

EPA is proposing approval of Massachusetts' January 31, 2008 SIP submittal that demonstrates that the state has adopted air pollution control strategies that represent RACT for purposes of compliance with the 1997 8-hour ozone standard. Additionally, we are proposing approval of two revised regulations submitted by Massachusetts on June 1, 2010: 310 CMR 7.18(8), "Solvent Metal Degreasing;" and 310 CMR 7.24(6), "Dispensing of Motor Vehicle Fuel."

EPA has evaluated the VOC and NOx stationary source control regulations which Massachusetts contends meets RACT for the 1997 8-hour ozone standard, and determined that a level of control consistent with RACT has been implemented in the state for purposes of the 1997 ozone standard. We do not anticipate any difficulties with enforcing the state's standards, as EPA has previously approved the rules Massachusetts cites as the means by which RACT is

implemented. We have determined that these regulatory elements and the resulting reduction in VOC and NO_X emissions from major sources demonstrate that a RACT level of control for both pollutants has been implemented in the state. EPA has previously determined that Massachusetts' two 8-hour ozone nonattainment areas attained the 1997 ozone standard by their attainment date, based on quality-assured air monitoring data. This determination was published on May 29, 2012 (77 FR 31496) for the Eastern Massachusetts nonattainment area, and on June 19, 2012 (77 FR 36404) for the Western Massachusetts nonattainment area. The improvements in air quality represented by these clean data determinations were brought about, in part, by the RACT program implemented by Massachusetts.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: February 5, 2013.

Ira W. Leighton,
Acting Regional Administrator,
EPA Region 1.

[FR Doc. 2013-03472 Filed 02/13/2013 at 8:45 am;
Publication Date: 02/14/2013]